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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,766	12/27/2005	Henri-Jacques Tochon-Danguy		7847

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EXAMINER

NIESZ, JASON KAROL

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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04/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/562,766

Applicant(s)

TOCHON-DANGUY ET AL.

Examiner

JASON K. NIESZ

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-19 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-19 and 21-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassel (US Patent 5,911,252) in view of Matsuno et al. (US Patent 5,039,863).

In Re claim 11 with reference to Figure 1A Cassel discloses a dose dispensing apparatus comprising a container (22), a means for controlling a mixture of stock solution and dilution solution (16, 18). The examiner notes that said mixture is created as both the stock solution and the dilution solution pass into the container (22).

Cassel doesn't disclose a means for radiation shielding of said dose dispensing apparatus or a means for detecting radioactivity of said mixture.

With reference to Figure 1 Matsuno discloses an apparatus for dispensing a dose of a radioactive mixture in which both a source of radioactive stock solution (1) and a container for containing a radioactive dose (10a) are shielded from radiation. With reference to Figure 9 Matsuno discloses a means for detecting radioactivity (109) which determines the radioactivity of a radioactive solution.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Cassel apparatus by adding radiation shielding and a radiation detector, in order to adapt the device for dispensing a radioactive solution.

With regards to the "means for radiation shielding of said radioactive dose dispensing apparatus" and "means for controlling a mix of radioactive stock solution and dilution stock solution" and "means for detecting radioactivity of said mix of radioactive stock solution and dilution stock solution.", these limitations meet the three-prong test per MPEP 2181 and thereby invoke 35 USC 112 6th paragraph. In the instant specification, page 5, paragraph 3, the "means for radiation shielding" is shown. In the instant specification, page 3, lines 14-15 and page 4, lines 4-6 the "means for controlling a mix" is shown. In the instant specification, page 6, paragraph 5 the "means for detecting" is shown. In Figure 1 Matsuno discloses shielding around a dispensing bottle (11), a diluted solution bottle (15) and a receiving container (12). In Figure 1A Cassel discloses a controller (16) and a mixing valve (18). In Figure 9 Matsuno discloses a radiation detector (109). In Matsuno, Shielding is considered to be an equivalent to applicant's means for radiation shielding and a radiation detector is considered to be an equivalent to applicant's means for detecting. In Cassel a controller and a mix valve is considered to be an equivalent to applicant's means for controlling a mix. Each of the above listed elements performs the same function in substantially the same way and produces substantially the same result as the corresponding element in applicant's specification. See MPEP 2183.

In Re claim 12 with respect to Figure 1A Cassel discloses a plunger operated disposable syringe (22).

In Re claim 13 with reference to Figure 1 Matsuno discloses a shielded receptacle for receiving a container (12). In the Cassel in view of Matsuno apparatus applied to claim 11 said receptacle would be adapted to receive the syringe of Cassel.

In Re claims 14 and 15 with reference to Figure 1A Cassel discloses a drive means (50) comprising a linear drive mechanism.

In Re claim 16 with reference to Figure 1A Cassel discloses a controller. Statements of intended use have been considered and determined not to limit claim 16 beyond the scope of the prior art: the controller of Cassel could operate in combination with the radiation detector to control dose being dispensed into the syringe.

In Re claim 17 Computer interfaces were well known in the art as a mechanism to allow a user to control an apparatus. Therefore, it would have been obvious to one of ordinary skill in the art to provide a computer interface for the controller of Cassel, in order to increase ease of use.

In Re claim 18 with reference to Figure 1A Cassel discloses disposable tubes (38).

In Re claim 19 with reference to Figure 1A Cassel discloses pinch valves (shown operable on tubes 24 and 26).

In Re claim 21 disposable syringes represent an old and well known in the art solution to the problem of spreading disease through syringe reuse.

Claim 22 is rendered obvious by Cassel in view of Matsuno as applied to claim 16 above.

In Re claim 23 disposable syringes represent an old and well known in the art solution to the problem of spreading disease through syringe reuse.

In Re claim 24 with reference to Figure 1 Matsuno discloses a shielded receptacle for receiving a container (12). In the Cassel in view of Matsuno apparatus applied to claim 11 said receptacle would be adapted to receive the syringe of Cassel.

In Re claims 25 and 26 with reference to Figure 1A Cassel discloses a drive means (50) comprising a linear drive mechanism.

In Re claim 27 Computer interfaces were well known in the art as a mechanism to allow a user to control an apparatus. Therefore, it would have been obvious to one of ordinary skill in the art to provide a computer interface for the controller of Cassel, in order to increase ease of use.

In Re claim 28 with reference to Figure 1A Cassel discloses disposable tubes (38).

In Re claim 29 with reference to Figure 1A Cassel discloses pinch valves (shown operable on tubes 24 and 26).

Response to Arguments

3. Applicant's arguments with respect to claims 11-19 and 21-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz
Examiner
Art Unit 3751

/Timothy L Maust/
for Gregory Huson, SPE of Art Unit 3751